

भारत का राजपत्र

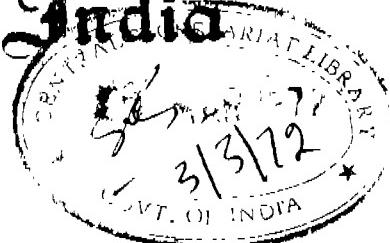
The Gazette of India

प्रसाधारण
EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY



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No. 60] NEW DELHI, WEDNESDAY, DECEMBER 8, 1971/AGRAHAYANA 17, 1893

इस भाग में अलग पृष्ठ संख्या दी जाती है जिससे कि यह ग्रन्थ संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 8th December, 1971:—

BILL No. 160 of 1971

A Bill to make certain provisions for the insurance of goods in India against damage arising from emergency risks and matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Emergency Risks (Goods) Insurance Act, 1971.

Short title,
extent
and dura-
tion.

(2) It extends to the whole of India.

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued by the President under clause (1) of article 352 of the Constitution of India on the 3rd day of December, 1971, and for such further period as the Central Government may, by notification in the Official Gazette, declare to be the period of emergency for the purposes of this Act, but its expiry shall not affect anything done or

omitted to be done before such expiry and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had been repealed by a Central Act.

10 of 1897.

**Defini.
tions.**

2. In this Act, unless the context otherwise requires,—
 - (a) “emergency risks” means such risks arising from,—
 - (i) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy;
 - (ii) any explosion or fire which involves explosives or munitions or other dangerous things required for the purposes of defence against any action of an enemy and which happens or is caused by, through, or in connection with, the manufacture, storage or transportation of any such explosives, munitions or other dangerous things;
 - (iii) measures taken under proper authority to avoid the spreading of or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as a direct result of any such action as is described in sub-clause (i) or of any such explosion or fire as is described in sub-clause (ii);
 - (iv) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving a substantial degree of risk to property;
 - (v) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving a substantial degree of risk to property;
 - (vi) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving a substantial degree of damage to or diminution of value of property;
 - (b) “enemy” means—
 - (i) any person or country committing external aggression against India;
 - (ii) any person belonging to a country committing such aggression;
 - (iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression;
 - (iv) any person belonging to such other country;
 - (c) “Fund” means the Emergency Risks (Goods) Insurance Fund constituted under section 10;
 - (d) “goods” means any materials, commodities or articles and includes materials, commodities or articles used in or for the construction or repair of any ship up to the time at which the ship after completion of construction, or repair, is launched;
 - (e) “insurable value” means the value of goods as ascertained for the purposes of insurance under this Act;
 - (f) “policy” or “policy of insurance” means a contract of insurance issued under the Scheme and includes a policy of insurance and renewal endorsement;

- (g) "quarter" means a period of three months commencing on the first day of January, April, July or October;
- (h) "Scheme" means the Emergency Risks (Goods) Insurance Scheme made under this Act;
- (i) "seller of goods" includes a seller of goods acting as an agent;
- (j) "supplier of goods" means a person carrying on a business in the course of which he supplies goods for the purpose of, or in pursuance of, contracts made by him for work, labour, or materials.

CHAPTER II

INSURABLE GOODS AND INSURANCE SCHEME

3. (1) Subject to the provisions of this section, the following goods shall, in relation to any person carrying on business in India as a seller or supplier of goods of any description, be deemed to be goods insurable under this Act, that is to say, all goods situated in India or, consigned from one place in India to another place in India and in transit, being either—

Goods
insur-
able
under
this
Act.

(i) goods of that description, or

(ii) goods used as material from which goods of that description are produced or as ingredients or component parts of goods of that description:

Provided that no goods shall be deemed to be insurable under this Act—

(a) in relation to any person, being the owner of the goods, who carries on business as a seller of goods, unless they are owned by him with a view to being sold, or to being used as material for the production of goods to be sold, or as ingredients or component parts of goods to be sold;

(b) in relation to any person, being the owner of the goods, who carries on business as a supplier of goods, unless they are owned by him with a view to being supplied for the purpose of, or in pursuance of, a contract made by him for work, labour or materials or to being used as material for the production of goods to be supplied as aforesaid, or as ingredients or component parts of goods to be supplied;

(c) in respect of a period in relation to any person carrying on business in India as a seller or supplier of goods of any description, if such goods are, before payment has been made of the premium under this Act for that period, in the custody, control or possession of the enemy.

(2) The Central Government may, by notification in the Official Gazette, direct that goods of any description specified in the notification shall, notwithstanding anything contained in this section, be deemed not to be goods insurable under this Act and a copy of such notification shall be laid after it is made, on the Table of each House of Parliament when such House is in session for a period of thirty days or for the duration of the session in which it is laid, whichever period is less.

(3) Nothing in sub-section (1) shall apply in relation to goods which are owned by Government or in respect of which the Government is the seller or supplier.

Owner-
ship.

4. (1) Save in so far as is otherwise expressly provided in this Act, any goods shall, subject to the provisions of this section, be deemed, for the purposes of this Act, to be owned,—

(a) if the property in the goods is for the time being vested in a person in relation to whom they are insurable under this Act, by that person;

(b) if the property in the goods is not so vested, by any person in relation to whom the goods are insurable under this Act and who is for the time being entitled, either unconditionally or conditionally, to have the property in the goods vested in him:

Provided that where—

(i) any goods would, under the foregoing provisions of this section, be deemed to be owned by a person in whom the property therein is vested otherwise than in the course of a business carried on by him in India, or who is entitled to have the property therein vested in him otherwise than in the course of such business, and

(ii) any person carrying on business in India is for the time being entitled to sell the goods as agent,

the goods shall be deemed to be owned by the last mentioned person.

(2) Where in the course of any business a ship is being, or has been, constructed under contract, and the ship or any part thereof or any goods appropriated for the construction thereof—

(a) would, apart from the provisions of this sub-section, have been deemed for the purposes of this Act to be owned at any time by the person from time to time carrying on the business, or

(b) have at any time been accepted, in pursuance of a contract made with him, by the person from time to time carrying on the business,

then, notwithstanding that they would not, apart from the said provisions, be deemed for the said purposes to be owned by the person from time to time carrying on the business, the ship and any part thereof and any goods so appropriated as aforesaid shall, subject to the provisions of sub-section (3), be deemed, in a case to which clause (a) of this sub-section applies, to continue to be owned by the person from time to time carrying on the business until the acceptance of the ship, in pursuance of the contract in question, by the person for whom it is being or has been, constructed, and in a case to which clause (b) of this sub-section applies, to be owned by the person from time to time carrying on the business at all times between the acceptance referred to in the said clause (b) and the acceptance of the ship as aforesaid by the person for whom it is being, or has been, constructed.

(3) The provisions of sub-section (2) shall apply in relation to the construction under contract in the course of a business of part of a ship, not being part of a ship which is being, or has been, constructed by the person from time to time carrying on the business, as they apply in relation to the construction of a ship—

(a) with the substitution for references to a ship or references to part of a ship;

(b) where the contract for the part of the ship is with the person for whom the ship is being constructed, with the substitution for references to the acceptance of the ship under the contract in question

of references to the acceptance of the ship under the contract for the construction thereof;

(c) where the contract for the part of the ship is with any other person, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the part of the ship under the contract for the construction of the part by the person for whom it is being, or has been, constructed.

(4) Where the person from time to time carrying on a business receives any money, under a policy issued in pursuance of the Scheme, in respect of the loss of or damage to a ship, part of a ship or goods which are deemed to be owned by him by virtue of sub-section (2) or sub-section (3), the money shall be held by him on trust for the person who, apart from the provisions of those sub-sections, would be deemed for the purposes of this Act to be the owner of the ship, part or goods, subject, however, to any lien or charge which would otherwise be enforceable against the ship, part or goods and subject also to the right to retain out of the money the amount of any expenses reasonably incurred by the first mentioned person in making good any part of the loss or damage which he is liable to make good.

5. (1) The Central Government may, by notification in the Official Gazette, put into operation a scheme to be called the Emergency Risks (Goods) Insurance Scheme, whereby the Central Government undertakes in relation to persons carrying on business in India as sellers or suppliers of goods, the liability of insuring of such persons against emergency risks, to the extent provided by or under this Act, in respect of goods insurable under this Act which are from time to time owned by such persons in the course of such business.

Emergency Risks (Goods) Insurance Scheme.

(2) The Scheme may also extend—

(a) to the undertaking by the Central Government, in relation to any person carrying on business in India as seller or supplier of goods, of the liability of insuring such a person against emergency risks in respect of goods insurable under this Act which are not owned by him but in which he has an interest arising in the course of that business;

(b) without prejudice to the provisions of clause (a) of this sub-section, to the undertaking by the Central Government, in relation to a person carrying on any business in India, of the liability of insuring such a person against emergency risks in respect of—

(i) any goods situated in India which are in his possession, otherwise than under a hire purchase agreement, for the purposes of that business,

(ii) any goods situated in India which are subject to a mortgage, pledge or charge in his favour held by him in the course of that business,

being in either case goods which are not owned by him but which are insurable under this Act in relation to the person by whom they are owned;

(c) to the undertaking by the Central Government, in relation to a person carrying on any business in India, of the liability of insuring such person against emergency risks in respect of any goods situated in India, which having been sold in India, for export from India, are in his possession for the purpose of such export and are goods which were prior to such sale insurable under this Act in relation to the person by whom they were then owned;

(d) to the undertaking by the Central Government, in relation to any person carrying on any business in India as a seller or supplier of goods, of the liability of insuring such a person against emergency risks in respect of goods imported into India through any port of India, while such goods are situated at such port or are in transit to a place in India.

(3) The Scheme shall be such as to secure—

(a) that the liability of the Central Government as insurer shall not extend to more than eighty per cent. of the insurable value of the property insurable;

(b) that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued, in the form and in respect of a period not exceeding the period specified in the Scheme, by a person acting on behalf of the Central Government:

Provided that the form of policy may be such as to limit the extent and nature of the indemnity provided by the Central Government and to impose conditions subject to which the indemnity is provided:

Provided further that the form of policy shall be such as to provide that no liability shall arise thereunder unless the premium in relation to the period in which any loss or damage occurs has been paid before the occurrence of such loss or damage;

(c) that any premium under a policy so issued is payable at a rate not exceeding three per cent. per annum of the sum insured as may be specified in the Scheme; and

(d) that the amount of any one premium payable under a policy so issued is not less than such sum as may be specified in the Scheme.

(4) Different forms of policies may be specified under sub-section (3) in relation to different descriptions of goods.

(5) The Central Government may, by notification in the Official Gazette, add to, amend or vary any Scheme made under this Act.

(6) Every Scheme shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the Scheme.

CHAPTER III

COMPULSORY INSURANCE

7. (1) While the Scheme is in operation, no person shall, after such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, carry on any business in India as a seller or supplier of goods, unless, in respect of any goods insurable under this Act which are for the time being owned by him in the course of that business, there is in force a policy of insurance against emergency risks issued in accordance with the Scheme, whereby he is insured in respect of such goods for a sum not less than the value thereof for the time being:

Power to make insurance compulsory.

Provided that the Scheme shall not restrict the carrying on of business as aforesaid by any person, if and so long as the value of all goods insurable under this Act which are for the time being owned by him within one and the same Presidency town or district in the course of that business does not exceed fifty thousand rupees.

(2) Whoever contravenes the provisions of this section shall be punishable with fine which may extend to one thousand rupees and with further fine which may extend to five hundred rupees for every day after the first on which the contravention continues.

8. (1) Where any person has failed to insure as, or to the full amount, required by this Act, and has thereby evaded the payment by way of premium of any money which he would have had to pay but for such failure, an officer authorised in this behalf by the Central Government may determine the amount of payment of which has been so evaded, and thereupon such person shall be liable, without prejudice to any other action that may be taken against him under this Act, to pay to the Central Government, as penalty, an amount equal to the amount so determined, and if no such payment is made on demand by the authorised officer, the amount of the penalty shall be recoverable from such person as an arrear of land revenue.

Omission to insure or to insure up to the full amount.

(2) A person against whom a determination is made under sub-section (1) may, within the period specified in the Scheme, appeal against such determination to the Central Government whose decision thereon shall be final.

9. (1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on any business of insuring persons carrying on business in India as sellers or suppliers of goods against emergency risks in respect of goods insurable under this Act which are from time to time owned by such persons in the course of such business as is last mentioned.

Restrictions on carrying on of certain insurance business.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

10. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year to a fund to be called the Emergency Risks (Goods) Insurance Fund such

Emergency Risks (Goods) Insurance Fund.

sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payment made on composition of offences under section 15 or by way of expenses or compensation awarded by a court, under section 545 of the Code of Criminal Procedure, 1898, out of any fine imposed in any prosecution under this Act.

5 of 1898.

(2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under the Scheme or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme.

(3) If at any time when a payment is to be made out of the Fund, the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall, after due appropriation made by Parliament by law, be paid into the Fund as an advance out of the Consolidated Fund of India.

(4) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall be disposed of in such manner as the Central Government may think fit.

(5) The Central Government shall prepare, in such form and manner as may be specified in the Scheme and shall publish either annually or at such shorter intervals as may be specified therein, an account of all sums received into and paid out of the Fund.

CHAPTER IV

MISCELLANEOUS

Power of
Central
Govern-
ment
to obtain
infor-
mation.

11. (1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with,—

(a) require any person carrying on in India the business of fire insurance or of a seller or supplier of goods to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time, enter any premises occupied by any person carrying on in India the business of a seller or supplier of goods for the purposes of that business and may inspect the premises and require any person found therein who is for the time being in charge thereof, or in control of the business carried on therein, to produce to him and allow him to examine such accounts, books or other documents as may relate to the business carried on in the premises and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not and, if so, to what extent, the person carrying on the business is insured under the Scheme in respect of goods owned by him in the course of that business, and of ascertaining the value of any goods insurable under the Scheme which are, or were at any relevant

time, owned by him in the course of that business and the maximum amount which would be recoverable in respect of any such goods under a policy issued under this Act.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without any reasonable excuse to comply with a demand made thereunder, shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to five hundred rupees.

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement which is false in a material particular, shall be punishable with fine which may extend to one thousand rupees.

(4) Where in any proceedings in respect of a contravention of section 7 in relation to any business, it is proved, in relation to that business,—

(a) that a demand for the production of a policy of insurance issued in accordance with the Scheme insuring the person carrying on the business was duly made under this section and was not complied with, and

(b) that the person making the demand was not satisfied that there was such a policy in existence,

it shall be presumed, except in so far as the contrary is proved, that the said section 7 was being contravened in relation to that business at the time when the demand was made and continued to be contravened in relation to that business at all times thereafter.

12. If any person, for the purpose of obtaining for himself or any other person any payment in respect of any damage due to the action of the enemy or under a policy issued in pursuance of the Scheme,—

(a) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular, or

(b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any book, account or other document which is false in a material particular, or

(c) with intent to deceive, withholds any material information, he shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term not exceeding three months, or with both.

13. (1) Where goods of any description have been insured by a seller or supplier of goods for any period, and before that period has elapsed the goods of that description have ceased, by virtue of a notification under sub-section (2) of section 3 to be goods insurable under

Punish-
ment
for giving
false
infor-
mation.

Refund of
premiums
in certain
cases.

this Act, the person who has insured such goods shall be entitled to a proportionate refund of the premium.

(2) Where a policy of insurance has been taken out in relation to goods which are not insurable under this Act and premium has been paid in relation to such policy, or where any premium has been paid in respect of goods which have ceased to be insurable under this Act, or where, in relation to goods insurable under this Act, premium has been made in excess of the amount due under the policy, the person making such payment or excess payment, as the case may be, shall be entitled to a refund of the whole of the amount so paid or paid in excess, as the case may be.

(3) If it is established to the satisfaction of the Central Government that a policy of insurance under the Scheme has been taken out separately by two or more persons in respect of the same goods, the policy taken out by any one such person may, on an application made by him and after such inquiry as the Central Government may think fit, be cancelled and thereupon the premium paid on such policy shall be refunded to the person by whom it was paid unless such person has recovered the premium from any other person, in which case, the refund shall be made to that other person:

Provided that no refund shall be made under this section unless the application for the refund is made before the expiry of six months from the date when the premium was paid.

(4) No suit shall be maintainable in any civil court against the Central Government or any person acting as the agent of the Central Government under section 6 for the refund of money paid or purporting to have been paid as premium in respect of any policy issued or purporting to have been issued under this Act.

Limitation on prosecution.

14. No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Central Government or an authority authorised in this behalf by the Central Government.

Composition of offences.

15. Any offence punishable under sub-section (2) of section 7, or sub-section (2) of section 9 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government, on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

Bar of legal proceedings.

16. No suit, prosecution or other legal proceeding shall lie against the Central Government or against any person for anything which is in good faith done or intended to be done under this Act.

Removal of doubts.

17. If any doubt arises as to whether a person is insurable in respect of any goods under this Act, the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of such doubt.

STATEMENT OF OBJECTS AND REASONS

In view of the present emergency, it is considered desirable that provision should be made for the insurance of goods against the risk of loss or damage as a result of enemy action. As the degree of risk which may be involved is necessarily uncertain, it will not be possible for insurers to cover it in the normal course, and the Scheme will have to be formulated, brought into force and operated on behalf of the Central Government.

2. The Bill seeks to provide for a scheme of insurance based on premium rates which can be varied up to the maximum limit provided under the Bill with reference to the actual nature or extent of the risk as it may exist from time to time. The various provisions are explained in detail in the notes on the clauses which are attached to the Bill.

NEW DELHI;

Y. B. CHAVAN.

The 6th December, 1971.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 66(1)/INS.I/71-III, dated the 6th December, 1971 from **Shri Y. B. Chavan**, Minister of Finance to the Secretary, Lok Sabha]

The President having been informed of the subject matter of the proposed Emergency Risks (Goods) Insurance Bill, 1971, recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 and its consideration under clause (3) of article 117 of the Constitution.

Notes on clauses

Clause 1, in effect provides that the Bill, when it is passed into law, shall come into force immediately in all the States or territories of India including Jammu and Kashmir. The provisions of the Act will continue to be in force throughout the period of the present emergency and for a reasonable period thereafter.

Clause 2 defines the words and expressions used in the Bill. The definition of "emergency risks" in sub-clause (a) and of "enemy" in sub-clause (b) are based on the corresponding definitions in the Emergency Risks (Goods) Insurance Act, 1962, and include loss or damage caused by explosions or by the adoption of "scorched earth" or "denial" policies.

Clause 3 makes it clear that the property insurable under the provisions of the Bill will be goods held in India for purposes of sale or supply in the course of business, and provides that goods which are in transit from any place in India to any other place in India will, throughout the period of such transit, be insurable in accordance with the provisions of the Bill.

Goods belonging to or sold or supplied by the Government and also those which have been already seized by enemy will not be insurable. Sub-clause (2) provides that certain goods which may be notified for this purpose by the Central Government would not be insurable under the Scheme.

Clause 4 provides for the ownership of goods, and consequently for the liability or obligations in regard to them to be determined in the event of doubt. The intention is that if there is any difficulty about determining the question whether the ownership of any goods has vested in any person at the time of insurance, the owner, or his agent if such an agent is entitled to sell the goods, should be the person entitled to the rights or liable for the obligations, as the case may be, under the various provisions of the Bill.

Clause 5 provides for a scheme of insurance of goods, within the scope of the provisions of the Bill, to be prepared and brought into force by notification at an appropriate stage by the Central Government. It is clarified for the avoidance of any doubt that persons interested in, or entitled to the possession of, any insurable goods in the course of their business, or persons to whom any insurable goods have been pledged, mortgaged or otherwise charged, may insure the goods, on their initiative, in lieu of the persons who as the deemed owners for the purposes of the Scheme may be bound or compelled to insure the goods in the normal course.

Goods which are in the process of being exported from, or imported into, India will be insurable while they are situated in India.

The Central Government's liability as the insurer under the Scheme will be limited in each case to eighty per cent. of the insurable value of the goods. The policies of insurance will be issued for periods specified in the Scheme. The premiums will be charged at a variable rate, which will be determined from time to time by the Central Government after taking into account the actual degree of risk which may be involved.

Clause 6 provides for the appointment of an agent to administer the Scheme on behalf of the Central Government.

Clauses 7 and 8.—Clause 7 provides that when a scheme of insurance is notified and brought into force, every person who in the course of his business is a seller or supplier of goods will be compelled to insure such goods to the extent that they are insurable under the Scheme. Clause 8 provides for the determination and recovery of an amount as penalty equivalent to the amount evaded payment by way of premium.

Goods, which being located in any district are of the value of Rs. 50,000 or less, are not compulsorily insurable in accordance with the provisions of the Scheme.

Clause 9 prohibits private insurers from competing with the Central Government in regard to the coverage of the abnormal emergency risks for which provision is made in the Bill.

Clause 10 provides for the establishment of an Emergency Risks (Goods) Insurance Fund. The fund is intended to be self-sufficient, but provision is being made for the Central Government to advance to the fund, if it is temporarily in deficit, any amount which may be needed for meeting the expenditure which may be chargeable to the fund. If there is ultimately a surplus in the fund, after provision has been made for all the obligations to the policy-holders, appropriate arrangements in regard to the utilisation of the surplus will be made by the Central Government.

Clauses 11 and 12.—Clause 11 provides for the grant of power to the Central Government to obtain information or to carry out such inspections as may be necessary, and clause 12 provides for penalties for furnishing any false information.

Clause 13 provides for the refund of premiums in certain cases but only if application for the refund is made within six months of the payment of the premium.

Clauses 14 to 17 contain the usual provisions in regard to the limitation on prosecutions, composition of offences, bar of legal proceedings in respect of action taken in good faith, and power to remove difficulties, if any.

FINANCIAL MEMORANDUM

Clause 10 of the Bill provides that an Emergency Risks (Goods) Insurance Fund will be established and that an amount not exceeding the amount of premiums and other collections received under the Scheme of insurance will be paid into that fund after due appropriation by law. The degree of risk as a result of enemy action is necessarily uncertain and a reasonably accurate estimate of the value of the property insurable in accordance with the provisions of the Bill cannot also be made. It is not possible, therefore, to anticipate exactly at this stage the rate at which the premiums may have to be fixed or the amounts receivable on account of the Emergency Risks (Goods) Insurance Fund. The Bill provides for a maximum rate of premium of three per cent. of the insurable value per annum. The clause provides that if at any time the balance in the Emergency Risks (Goods) Insurance Fund is inadequate to meet the outgo therefrom, an amount equal to the deficiency shall be paid into the Fund, after due appropriation made by Parliament by law out of the Consolidated Fund of India. No estimate of the likely amount involved is possible.

2. The recurring expenditure on administration of the Scheme is expected to amount to about Rs. 17 lakhs per year on account of establishment expenses of the organisation to be entrusted with administration. There is already an organisation for this purpose which has been functioning over since the previous declaration of Emergency in 1962 for which a Budget provision of Rs. 6.83 lakhs has been provided in respect of the current financial year. The amount required is therefore Rs. 9.63 lakhs during the current financial year. For the year 1972-73 and subsequent years the amount required will be about Rs. 17 lakhs per year. The organisation will be suitably augmented for the purposes of administration of the present Bill.

3. No non-recurring expenditure will be incurred on account of the provisions of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill empowers the Central Government to make a scheme whereby that Government undertakes in relation to persons carrying on business in India as sellers or suppliers of goods, the liability of insurance of such persons against emergency risks, to the extent provided by or under the Act, in respect of goods insurable under the Act which are from time to time owned by such persons in the course of such business. The matters in relation to which the Scheme may be made have been specified in the Bill. These are matters of procedure and detail which can hardly be provided in the Bill. The delegation of the legislative power is, therefore, of a normal character.

BILL No. 161 of 1971

A Bill to make certain provisions for the insurance of certain property in India against damage arising from emergency risks and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent
and
duration.

1. (1) This Act may be called the Emergency Risks (Undertakings) Insurance Act, 1971.

(2) It extends to the whole of India.

(3) It shall remain in force during the period of operation of the Proclamation of Emergency issued by the President under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971, and for such further period as the Central Government may, by notification in the Official Gazette, declare to be the period of emergency for the purposes of this Act, but its expiry shall not affect anything done or omitted to be done before such expiry and section 6 of the General Clauses Act, 1897, shall apply upon the expiry of this Act as if it had been repealed by a Central Act.

10 of 1897.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) "building" includes foundations, plinths, floors, staircases, tanks, engine and boiler beds, chimneys, flues and boundary, walls;

(b) "emergency risks" means such risks arising from—

(i) action taken by an enemy or action taken in combatting an enemy or in repelling an imagined attack by an enemy;

(ii) any explosion or fire which involves any explosives or munitions or other dangerous things required for the purposes of defence against any action of an enemy and which happens or is caused by, through, or in connection with, the manufacture, storage or transportation of any such explosives, munitions or other dangerous things;

(iii) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as the direct result of any such action as is described in sub-clause (i) or of any such explosion or fire as is described in sub-clause (ii);

(iv) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving risk to property;

(v) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving risk to property;

(vi) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving damage to or diminution of the value of property;

(c) "enemy" means—

(i) any person or country committing external aggression against India;

(ii) any person belonging to a country committing such aggression;

(iii) such other country as may be declared by the Central Government to be assisting the country committing such aggression;

(iv) any person belonging to such other country;

(d) "factory" means a factory as defined in clause (m) of section 2 of the Factories Act, 1948;

(e) "factory building" includes all buildings comprised in the factory, and such other buildings (including residential buildings for staff and workmen, hospitals and welfare centres) within a radius of three kilometres from the main factory building as are in the same ownership or occupation as the factory and are used for the purposes of the factory;

(f) "Fund" means the Emergency Risks (Undertakings) Insurance Fund constituted under section 7;

(g) "inland vessel" means a vessel not ordinarily plying outside the limits of the territorial waters surrounding India;

(h) "insurable value" means the value of the property as ascertained for the purposes of insurance under this Act;

(i) "occupier" of a factory has the meaning assigned to it in clause (n) of section 2 of the Factories Act, 1948;

63 of 1948.

(j) "owner", in relation to property insurable under this Act, means the owner of such property and includes, when parts of such property in relation to an undertaking to which this Act applies are owned by different persons, each such person in respect of the part owned by him;

(k) "policy or policy of insurance" means a contract of insurance issued under the Scheme and includes a policy of insurance or renewal endorsement;

(l) "property insurable under this Act" means—

(i) in relation to any factory, factory buildings, and, except where they are for the time being goods insurable under the Emergency Risks (Goods) Insurance Act, 1971, all plant and machinery in the factory, all materials in the factory for use in the production or transmission of motive power, or in the maintenance of plant and machinery (including lubricants) or in the maintenance of factory buildings;

(ii) in relation to Electric Supply Undertakings, the stations, sub-stations, switch houses and transformer houses, in addition to the insurable property referred to in sub-clause (i) of this clause;

(iii) in relation to hydro-electric supply undertakings, the whole of sluice houses, valve houses, water-pipe lines, penstocks and any other plant or machinery appertaining to the intake of hydraulic power;

(iv) in relation to mines as defined in the Mines Act, 1952, plant and machinery, whether above or below ground, buildings including inclines and situated within a radius of three kilometres from the mine excavation and in relation to such plant, machinery and buildings and materials above ground as would, if the mine were a factory, be included in property insurable under this Act under sub-clause (i) of this clause;

35 of 1952.

(v) in relation to gas supply undertakings, the whole of distribution systems, in addition to the insurable property referred to in sub-clause (i) of this clause;

(vi) in relation to any trading Corporation or any body of Port Trustees or Commissioner, or any other person specified in this behalf by the Central Government, owning inland vessels and all inland vessels (including the hull, machinery and fittings thereof), fuel carried thereon and stores carried therein for the use of the crew, owned by it or him, as the case may be, where such vessels, fuel and stores are not for the time being plant or materials insurable in relation to a factory under this Act and the Scheme thereunder, or goods insurable under the Emergency Risks (Goods) Insurance Scheme made under the Emergency Risks (Goods) Insurance Act, 1971;

(vii) in relation to oil mines and oil refineries, in addition to properties referred to in sub-clause (i) or sub-clause (iv) of this clause, as the case may be, derricks, drills and rigs and group gathering stations and storage tanks of oil mines, plant and machinery required for pumping, refining or processing any mineral oil, and pipe lines and all buildings of such installations within a radius of three kilometres thereof;

(viii) in relation to tea estates, in addition to the properties referred to in sub-clause (i) of this clause, standing tea crops in any garden belonging to the owner of any factory:

Provided that no property shall be deemed to be insurable under this Act in respect of a period if such property is, before payment has been made of the premium under this Act for that period, in the custody, control or possession of the enemy;

(m) "quarter" means a period of three months commencing on the first day of January, April, July or October;

(n) "Scheme" means the Emergency Risks (Undertakings) Insurance Scheme made under this Act;

(o) "undertaking to which this Act applies" includes—

(i) factories,

(ii) electric supply undertakings, hydro-electric supply undertakings and State Electricity Boards constituted under the Electricity (Supply) Act, 1948,

54 of 1948.

35 of 1952.

(iii) mines, as defined in the Mines Act, 1952,

(iv) gas supply undertakings,

(v) oil mines and oil refineries,

(vi) tea estates,

(vii) any trading Corporation or any body of Port Trustees or Commissioners or any other person specified in this behalf by the Central Government, owning inland vessel,

but does not include any undertaking which is owned and departmentally run by Government or any undertaking which is exempted under section 15 from the provisions of this Act;

(p) "vessel" means a vessel the value of which including the hull, machinery and fittings but excluding cargo, fuel and stores carried for the use of the crew, as ascertained for the purpose of insurance under the Scheme, exceeds two thousand and five hundred rupees, propelled wholly or in part by steam, electrical or mechanical power, or adapted for towing by a vessel so propelled, and includes any such vessel while used as a place of habitation or for storage of goods but does not include a vessel of the type commonly called country craft.

CHAPTER II

EMERGENCY RISKS (UNDERTAKINGS) INSURANCE SCHEME

3. (1) The Central Government may, by notification in the Official Gazette, put into operation a scheme to be called the Emergency Risks (Undertakings) Insurance Scheme, whereby the Central Government

Emergency
Risks
(Under-
takings)
Insurance
Scheme.

undertakes the liability of insuring property insurable under this Act against emergency risks, to the extent provided by or under this Act.

(2) The Scheme may extend to the undertaking by the Central Government in relation to any person in India of the liability of insuring such person against emergency risks in respect of any property insurable under this Act which is not owned by him but in which he has an interest, up to the extent of such interest.

(3) The Scheme shall be such as to secure—

(a) that the liability of the Central Government as insurer shall not extend to more than eighty per cent. of the insurable value of the property insurable;

(b) that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued, in the form and in respect of a period not exceeding the period specified in the Scheme, by a person acting on behalf of the Central Government:

Provided that the form of policy may be such as to limit the extent and nature of the indemnity provided by the Central Government and to impose conditions subject to which the indemnity is provided:

Provided further that the form of policy shall be such as to provide that no liability shall arise thereunder unless the premium in relation to the period in which any loss or damage occurs has been paid before the occurrence of such loss or damage;

(c) that any premium under a policy so issued is payable at a rate not exceeding three per cent. per annum of the sum insured as may be specified in the Scheme;

Provided that nothing in this clause shall prevent the securing by the Scheme of different rates of premium in relation to properties of different descriptions insurable under this Act owned by any undertaking to which this Act applies;

(d) that the amount of any one premium payable under a policy so issued is not less than such sum as may be specified in the Scheme.

(4) The Scheme may provide—

(a) for undertaking in relation to works in course of construction which, when completed, will become properties insurable under the Act and such plant and machinery appertaining to such works as may be specified in the Scheme, the same liabilities as are undertaken by the Scheme in relation to the undertakings;

(b) that the payments due under a policy of insurance issued under the Scheme, may at the option of the Central Government, take either of the following forms, namely:—

(i) payment, within the limits of the liability assumed by the Central Government and in such manner and by such instalments as the Central Government may think fit, of the cost necessary to restore the property as far as practicable to the condition in which it existed before the occurrence of the damage, or

(ii) compensation, within the aforesaid limits, for the loss in value, ascertained on the basis of values and prices ruling at the time at which the policy of insurance was taken out, or at which the loss occurred, whichever is less, suffered by the property as a result of the damage, after due allowance has been made for depreciation during the period of insurance cover;

(c) that payments due under a policy of insurance under the Scheme may be postponed to any time before the expiry of one year from the date on which this Act ceases to be in force, or, subject to payment of interest at the rate of two per cent. per annum from the expiry of the said year, to any later date;

(d) for making it an express or implied condition of any policy of insurance issued under the Scheme—

(i) that the owner or occupier of a factory or owner of other undertakings mentioned in sub-section (1), as the case may be, shall comply with all regulations or instructions made or issued under the authority of Government for safeguarding the property against damage from emergency risks, or

(ii) that, where the Central Government exercises its option to pay the cost necessary to restore the property to its original condition the owner of the undertaking shall if so required by the Central Government, reconstruct the property or remove the property to and reconstruct it in another locality.

(5) Different forms of policies may be specified in the Scheme under sub-section (3) in relation to different classes of undertakings.

(6) The Central Government may, by notification in the Official Gazette, add to, amend or vary any Scheme made under this Act.

(7) Every Scheme shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the Scheme or both Houses agree that the Scheme should not be made, the Scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the Scheme.

4. The Central Government may, by notification in the Official Gazette, employ or authorise the employment of any person to act as its agent for the issue of policies and making recommendations for the settlement of claims under the Scheme, and may pay to the person so employed such remuneration as it may think fit.

5. (1) While the Scheme is in operation, every owner of an undertaking to which this Act applies, shall,—

(a) by such date as may be specified in this behalf by the Central Government by notification in the Official Gazette, or

Employ-
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of agents
by the Cen-
tral Gov-
ernment.

Duty of
owners of
undertak-
ings to
insure
against
emergency
risks.

(b) in respect of property becoming property insurable under this Act after the date specified under clause (a), or in a case to which sub-section (2) refers, before the commencement of the quarter next following that in which,—

(i) the property becomes insurable under this Act, or

(ii) the reconstruction of the property is completed,

take out a policy of insurance against emergency risks issued in accordance with the Scheme whereby he is insured in respect of all property insurable under this Act which appertains to the undertaking for a sum which is not less than the insurable value of such property:

Provided that where the undertaking is a factory and the owner thereof is not himself the occupier of the factory, the occupier of the factory shall, unless the owner has already taken out a policy of insurance as required by this sub-section, himself take out the policy, and in such a case the occupier shall be deemed to act as the agent of the owner and shall be entitled to receive from the owner all sums paid as premiums on the policy:

Provided further that in the case of a trading Corporation or body of Port Trustees or Commissioners or any other person whose inland vessels become insurable under this Act, the policy of insurance taken out shall be for a sum not less than the insurable value of such vessels, fuel and stores; and this obligation shall in the case of a trading Corporation incorporated outside India rest upon the manager of the principal place of business in India of the Corporation.

(2) The obligation imposed by sub-section (1) includes, when the owner of the undertaking is required by the Central Government to reconstruct the property which has suffered damage, an obligation to take out an additional policy of insurance as required by the sub-section in respect of the reconstructed property.

(3) When an undertaking in respect of which a policy of insurance against emergency risks has been taken out as required by this section is transferred from one owner to another or there is a change of occupier of an undertaking which is a factory, the policy may be transferred to the new owner or occupier and such new owner or occupier shall succeed to all rights and liabilities under and in relation to the policy as if the policy had been in the first instance taken out by him.

(4) Whoever contravenes the provisions of sub-section (1) or the proviso thereto, or, having taken out a policy of insurance as required by that sub-section, fails to pay any premium which is due thereon, shall be punishable with fine which may extend to two thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention or failure continues, and such punishment shall be without prejudice to any other penalty or liability incurred in consequence of such contravention or failure.

(5) Where any offence under sub-section (4) is tried by a Presidency Magistrate or a magistrate of the first class, then, notwithstanding anything contained in the Code of Criminal Procedure, 1898, the magistrate trying the offence may pass any sentence authorised by that sub-section.

6. (1) After the date on which the Scheme is put into operation, no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on the business of insuring undertakings to which this Act applies in India against emergency risks in respect of property insurable under this Act.

Restrictions on carrying on certain insurance business.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

7. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, transfer in each financial year, to a fund to be called the Emergency Risks (Undertakings) Insurance Fund such sums, as may be considered necessary, not exceeding the sums received by the Central Government by way of insurance premiums under the Scheme, or by way of payments made on composition of offences under section 13 or by way of expenses or compensation awarded by a Court, under section 545 of the Code of Criminal Procedure, 1898, out of any fine imposed in any prosecution under this Act.

Emergency Risks (Undertakings) Insurance Fund.

5 of 1898.

(2) There shall be paid from out of the Fund all sums required for the discharge by the Central Government of any of its liabilities under the Scheme, or for payments by the Central Government under section 10, or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme.

(3) If at any time when a payment is to be made out of the Fund the sum standing to the credit of the Fund is less than the sum required for the making of that payment, an amount equal to the deficiency shall, after due appropriation made by Parliament by law, be paid into the Fund as an advance out of the Consolidated Fund of India.

(4) If at any time the amount standing to the credit of the Fund exceeds the sum which, in the opinion of the Central Government, is likely to be required for the making of payments out of the Fund, the excess shall be disposed of in such manner as the Central Government may think fit.

(5) The Central Government shall prepare in such form and manner as may be specified in the Scheme and shall publish either annually or at such shorter intervals as may be specified therein, an account of all sums received into and paid out of the Fund.

CHAPTER III

MISCELLANEOUS

8. (1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether or not the owner or occupier of any property required to be insured under this Act has taken out a policy of insurance as required by this Act in respect of such property, or for the purpose of investigating the insurable value of any property insured, or required to be insured, or proposed for insurance

Power of Central Government to obtain information.

under this Act, or for the purpose of estimating the damage suffered by any property insured under this Act,—

(a) require the owner or occupier of the property, or any person carrying on in India the business of fire insurance in respect of the property, to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time, enter any premises comprising or containing the property, inspect such premises or property, and require any person found on such premises, who is for the time being in charge thereof, or in control thereof, or whom he believes to be in possession of information relevant to his investigation, to produce to him and allow him to examine such accounts, books or other documents as he may think necessary, or to furnish to him such other information as he may reasonably think necessary.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any demand made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to one thousand rupees.

(3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular shall be punishable with fine which may extend to one thousand rupees.

(4) Where in any proceedings in respect of a contravention of section 5 in relation to any undertaking, it is proved, in relation to that undertaking—

(a) that a demand for the production of a policy of insurance issued in accordance with the Scheme insuring the owner or occupier of the insurable property was duly made under this section and was not complied with, and

(b) that the person making the demand was not satisfied that there was such a policy in existence,

it shall be presumed, except in so far as the contrary is proved, that the said section 5 was being contravened in relation to that undertaking at the time when the demand was made and continued to be contravened in relation to that undertaking at all times thereafter.

9. If any person, for the purpose of obtaining for himself or any other person any payment in respect of any damage due to any action of the enemy or under a policy issued in pursuance of the Scheme,—

(a) furnishes any information which he knows to be false in a material particular, or recklessly furnishes any information which is false in a material particular, or

(b) with intent to deceive, produces, furnishes, sends or otherwise makes use of any book, account or other document which is false in a material particular, or

(c) with intent to deceive, withholds any material information, he shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term not exceeding three months, or with both.

10. Where the Central Government requires the owner of an undertaking to remove the insurable property and to reconstruct it in another locality, the Central Government shall make to such owner, out of the Fund, such payments, in addition to any sum payable under policy of insurance, as it considers sufficient to defray the cost of the removal and, if necessary, the replacement of any part of the property in respect of which no compensation is payable.

11. (1) Where any person has failed to insure as, or to the full amount, required by this Act, and has thereby evaded the payment by way of premium of any money which he would have had to pay but for such failure, an officer authorised in this behalf by the Central Government may determine the amount, payment of which has been so evaded, and thereupon such person shall be liable, without prejudice to any other action that may be taken against him under this Act, to pay to the Central Government, as penalty, an amount equal to the amount so determined, and if no such payment is made on demand by the authorised officer, the amount of the penalty shall be recoverable from such person as an arrear of land revenue.

(2) A person against whom a determination is made under sub-section (1) may, within the period specified in the Scheme, appeal against such determination to the Central Government whose decision thereon shall be final.

12. No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Central Government or an authority authorised in this behalf by the Central Government.

Limitation on prosecutions.

13. Any offence punishable under sub-section (4) of section 5 may, either before or after the institution of the prosecution, be compounded by the Central Government, or by any authority authorised in this behalf by the Central Government, on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

Composition of offences.

14. (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Bar of legal proceedings.

(2) No suit shall be maintainable in any civil court against the Central Government, or a person acting as its agent under section 4, for the refund of any money paid or purporting to have been paid as premium on a policy of insurance taken out or purporting to have been taken out under this Act.

15. (1) The Central Government may, by notification in the Official Gazette, exempt any class or description of undertakings from the provisions of this Act requiring properties insurable in relation to such undertakings to be insured or to continue to be insured under this Act; but

Power to exempt undertakings.

Payment towards cost of removal and reconstruction of insurable property.

Determination of premiums unpaid.

such exemption shall not prejudice the infliction of any penalty or the accrual of any liability incurred before the date on which the exemption takes effect.

(2) In granting any exemption under this section the Central Government may direct that the exemption shall take effect or be deemed to have taken effect on a specified date after or before the date of the notification.

Refund of premiums in certain cases.

16. (1) Where any property has been insured by any owner or occupier thereof for any period, and before that period has elapsed the property or the property of that description has ceased, by virtue of a notification under sub-section (1) of section 15, to be insurable under this Act, the person who has insured the property shall be entitled to a proportionate refund of the premium.

(2) Where a policy of insurance has been taken out in relation to a property which is not insurable under this Act and premium has been paid in relation to such policy, or where any premium has been paid in respect of a property which has ceased to be insurable under this Act, or where, in relation to a property insurable under this Act, premium has been paid in excess of the amount due under the policy, the person making such payment or excess payment, as the case may be, shall be entitled to a refund of the whole of the amount so paid or paid in excess as the case may be.

(3) If it is established to the satisfaction of the Central Government that a policy of insurance under the Scheme has been taken out separately by two or more persons in respect of the same property, the policy taken out by any one such person may, on an application made by him and after such inquiry as the Central Government may think fit, be cancelled and thereupon the premium paid on such policy shall be refunded to the person by whom it was paid unless such person has recovered the premium from any other person, in which case, the refund shall be made to that other person:

Provided that no refund shall be made under this section unless the application for the refund is made before the expiry of six months from the date when the premium was paid.

Removal of doubts.

17. If any doubt arises as to whether a person is insurable in respect of any property insurable under this Act, the Central Government may, by order, make such directions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of such doubt.

18. A copy of every notification made by the Central Government under section 15, shall be laid after it has been made, on the Table of each House of Parliament when such House is in session for a period of thirty days or for the duration of the session in which it is so laid, whichever period is less.

Notifica-
tion
under
section
15 to be
laid
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ment.

STATEMENT OF OBJECTS AND REASONS

In view of the present emergency, it is considered desirable that provision should be made for the insurance of certain properties in India against the risk of loss or damage as a result of enemy action. As the degree of risk which may be involved is necessarily uncertain, it will not be possible for insurers to cover it in the normal course, and the Scheme will have to be formulated, brought into force and operated on behalf of the Central Government.

2. The Bill seeks to provide for a scheme of insurance based on premium rates which can be varied up to the maximum limit provided under the Bill with reference to the actual nature or extent of the risk as it may exist from time to time. The various provisions are explained in detail in the notes on the clauses which are attached to the Bill.

NEW DELHI;

Y. B. CHAVAN.

The 6th December, 1971.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 66(1) INS.I/71-IV dated the 6th December, 1971 from Shri Y. B. Chavan, Minister of Finance to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Emergency Risks (Undertakings) Insurance Bill, 1971, recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 and its consideration under clause (3) of article 117 of the Constitution.

Notes on clauses

Clause 1 in effect provides that the Bill, when it is passed into law, shall come into force immediately in all the States and territories of India including Jammu and Kashmir. The provisions of the Act will continue to be in force throughout the period of the present emergency and for a reasonable period thereafter.

Clause 2 defines the words and expressions used in the Bill. The definition of "enemy" is based on the corresponding definition in the Emergency Risks (Factories) Insurance Act, 1962. The definition of "emergency risks" is based on the provisions of the previous law; it is comprehensive, and includes any risk of loss or damage through explosions or through the adoption of 'scorched earth' or 'denial' measures. Property insurable under the Act will include factory buildings, plant and machinery, and materials used in or by the factory, gas and electric supply undertakings, inland vessels, standing tea crops, mines equipment and oil companies' installations, but will exclude any goods which are insurable under the Emergency Risks (Goods) Insurance Scheme.

Clause 3 provides for a scheme of insurance of undertakings within the scope of the provisions of the Bill to be prepared and brought into force by notification at an appropriate stage by the Central Government. It is clarified for the avoidance of any doubt that persons interested in any property insurable under the Act may insure that property on their initiative, in lieu of the persons who as the owners for the purposes of the scheme may be bound or compelled to insure the property in the normal course.

The Central Government's liability as the insurer will be limited in each case to eighty per cent. of the insurable value of the property and may be discharged either by payment in cash or by reimbursement of the cost of restoring the insured property to the condition in which it was before the damage. In the event of property relating to undertaking being reconstructed, the Central Government may provide, as a condition of such reconstruction, that the property shall be removed to some other locality. The policies of insurance will be issued for periods, the duration of which will be determined by the Central Government, but the periods of validity of the policies may be extended from time to time. The premiums will be charged at a variable rate which will be determined from time to time by the Central Government, after taking into account the actual degree of risk which may be involved.

Works in course of construction which on completion will become properties insurable under the Bill will be eligible for protection under the scheme, in the same manner and to the same extent, as completed undertakings which are working normally.

Clause 4 provides for the appointment of an agent to administer the scheme on behalf of the Central Government.

Clause 5 provides that when a scheme of insurance is notified and brought into force, the owner of an insurable property, or where the owner

himself is not the occupier of such property, the occupier acting on his behalf will be compelled to insure such property to the extent that it is insurable under the scheme.

In the event of a change in the ownership of an undertaking during the currency of a policy of insurance issued in relation to it, the policy, along with the rights and liabilities thereunder, will be transferred to the new owner.

Clause 6 prohibits insurers carrying on general insurance business from competing with the Central Government in regard to the coverage of the abnormal emergency risks for which provision is made in the Bill.

Clause 7 provides for the establishment of an Emergency Risks (Undertakings) Insurance Fund. The Fund is intended to be self-sufficient, but provision is being made for the Central Government to advance to the Fund, if it is temporarily in deficit, any amount which may be needed for meeting the expenditure which may be chargeable to the Fund. If there is ultimately a surplus in the Fund after providing for all the obligations to the policy-holders, appropriate provision in regard to the utilisation of the surplus will be made by the Central Government.

Clauses 8 and 9.—*Clause 8* provides for the grant of power to the Central Government to obtain information or to carry out such inspections as may be necessary and *Clause 9* provides for penalties for furnishing any false information.

Clause 10 provides that if the Central Government requires any property to be removed to any other locality, the cost of such removal will also be paid out of the Emergency Risks (Undertakings) Insurance Fund.

Clause 11 provides for the determination and recovery as penalty of an amount equivalent to the amount evaded payment by way of premium either because the payment has been evaded or because it has been in arrears.

Clauses 12 to 14 contain the usual provisions in regard to the limitation of prosecutions, the composition of offences and bar of legal proceedings in respect of action taken in good faith under the relevant provisions of the Bill.

Clauses 15 and 16.—*Clause 15* provides for the grant of power to the Central Government to exempt undertakings of any particular class or description, if it is considered necessary or expedient to do so, while *Clause 16* provides for refund of the premiums in certain cases.

Clause 17 provides for the grant of power to the Central Government to remove difficulties, if any.

FINANCIAL MEMORANDUM

Clause 7 of the bill provides that an Emergency Risks (Undertakings) Insurance Fund will be established and that an amount not exceeding the amount of premiums and other collections received under the scheme of insurance will be paid into the Fund after due appropriation by law. The degree of risk as a result of enemy action is necessarily uncertain and a reasonably accurate estimate of the value of the property insurable in accordance with the provisions of the Bill cannot also be made. It is not possible, therefore, to anticipate exactly at this stage the rate at which the premiums may have to be fixed or the amounts receivable on account of the Emergency Risks (Undertakings) Insurance Fund. The Bill provides for a maximum rate of premium of three per cent. of the insurable value per annum. The clause provides that if at any time the balance in the Emergency Risks (Undertakings) Insurance Fund is inadequate to meet the outgo therefrom, an amount equal to the deficiency shall be paid into the Fund, after due appropriation made by Parliament by law out of the Consolidated Fund of India. No estimate of the likely amount involved is possible.

2. The recurring expenditure on administration of the scheme is expected to amount to about Rs. 17 lakhs per year on account of establishment expenses of the organisation to be entrusted with administration. There is already an organisation for this purpose which has been functioning ever since the previous declaration of Emergency in 1962 for which a Budget provision of Rs. 6.83 lakhs has been provided in respect of the current financial year. The amount required is therefore Rs. 9.63 lakhs for the current financial year. For the year 1972-73 and subsequent years the amount required will be about Rs. 17 lakhs per year. The organisation will be suitably augmented for the purposes of administration of the present Bill.

3. No non-recurring expenditure will be incurred on account of the provisions of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill empowers the Central Government to make a scheme whereby that Government undertakes the liability of insuring property insurable under the Act against emergency risks, to the extent provided by or under the Act. The matters in relation to which the Scheme may be made have been specified in the Bill. These are matters of procedure and detail which can hardly be provided for in the Bill. The delegation of the legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary.